

## **Five Minute Overview of the Virginia Freedom Of Information Act**

### **I. General.**

- A. Purpose is transparent government. “The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.... The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government....” Va. Code § 2.2-3700.
- B. Board members are required to “read and become familiar with the provisions of this chapter.” Va. Code § 2.2-3702.
- C. “Any exemption from public access to records or meetings shall be narrowly construed....” Va. Code § 2.2-3700.
- D. Enforcement and penalties. “[T]he petitioner shall be entitled to recover reasonable costs and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust....” Va. Code § 2.2-3713(D). “[T]he court, if it finds that a violation was willfully and knowingly made, shall impose upon such member in his individual capacity ... a civil penalty of not less than \$250 nor more than \$1,000.... For a second or subsequent violation, such civil penalty shall be not less than \$1,000 nor more than \$2,500.” Va. Code § 2.2-3714.

### **II. Meetings (Va. Code § 2.2-3707)**

- A. Meetings include formal or informal gathering, physically or electronically, of three members, or a quorum (if less than three) of the members of the Board or of any committee created to perform a delegated function or advise the public body. Does not include employees of a public body. Va. Code § 2.2-3701 .
- B. Notice is required for all meetings.
  - 1. Notice must include the date, time, and location of the meeting, whether public comment allowed, and if so, when.
  - 2. Must be posted at certain public places and individually sent to those who request it.
  - 3. Must be posted and sent three working days before the meeting; for emergencies, simultaneous with member notice.
- C. Agenda packets and materials (unless exempt) must be made available for public inspection at the same time they are furnished to members.
- D. No voting by written or secret ballot.
- E. Meetings may be closed to the public only for purposes listed in Va. Code § 2.2-3711, and only if the procedure specified in Va. Code § 2.2-3712 is followed. This requires a motion in open session stating the purpose for the closed session, citing the statutory authority and identifying the substance of the matter to be discussed. Nothing may be discussed in the closed session except what was identified in the motion. Then members must reconvene in open session and certify by roll call vote that (i) only public business matters lawfully exempted from open meeting requirements under FOIA and (ii) only such public business matters as were identified in the

motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting.

- F. Telephonic or other electronic meetings are prohibited unless they meet certain requirements in Va. Code § 2.2-3708 or Acts 2003, c.346, cl.1.
- G. Public is entitled to photograph or record meetings.
- H. Minutes must be kept. Draft minutes must be posted to certain Internet sites within ten working days. Final minutes must be posted within three working days after approval. Va. Code § 2.2-3707.1

### III. Records

- A. All public records shall be open to inspection and copying by any citizens of the Commonwealth, as well as representatives of media with circulation or broadcasting in Virginia. Va. Code § 2.2-3704.
- B. Request for such access need not be written and need not cite FOIA.
- C. FOIA applies to existing records. It does not require public bodies to research and answer questions.
- D. Public body must respond in writing within five working days. Response must state that the requested records will be provided, or else must cite specific statutory authority to deny access to some or all of what was requested and must provide certain other information about the withheld records or portions of records. See Va. Code § 2.2-3704. If it is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period, the five-day response may state this and explain the circumstances, in which case an additional seven work days are allowed.
- E. Most exceptions to mandatory disclosure are listed in Va. Code § 2.2-3705.

## **Five Minute Overview of the State and Local Government Conflict of Interests Act**

### **I. General.**

- A. Policy. “The General Assembly, recognizing that our system of representative government is dependent in part upon . . . its citizens maintaining the highest trust in their public officers and employees, finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests....” Va. Code § 2.2-3100.
- B. Enforcement and penalties. Civil and criminal penalties for knowingly violating the act. Contracts made in violation of the act may be declared void.
- C. Advisory opinions are available from the Attorney General pursuant to Va. Code § 2.2-3121. ‘A state officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the Attorney General made in response to his written request for such opinion and the opinion was made after a full disclosure of the facts.’”
- D. Act provides minimum standards of clearly improper conduct. Personal standards are and should be higher than bare minimum compliance.
- E. Other statutes can apply, e.g., the Ethics article of the Virginia Public Procurement Act. See Va. Code §§ 2.2-4367 through 2.2-4377.

### **II. Generally Prohibited Conduct**

- A. Mostly falls in the category of bribes.
- B. Examples include: soliciting or accepting money or other things of value for services performed in the scope of official duties (beyond the compensation provided by law); offering or accepting money or anything of value for using public position to obtain employment, contract, or other economic benefit for another; using confidential information for gain; accepting any gift or opportunity that reasonably tends to influence the performance of one’s official duties; or accepting any business or professional opportunity with knowledge that there is a reasonable likelihood it is intended to influence the performance of official duties. See Va. Code § 2.2-3103.

### **III. Prohibited conduct regarding contracts**

- A. Members are generally prohibited from having a personal interest in contracts with the Commonwealth.
- B. Definitions
  - 1. “Personal interest” means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (iv) ownership of real or personal property if the interest exceeds \$10,000 in value and excluding

ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of (i) or (iv) above.

2. "Personal interest in a contract" means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.

C. Exceptions are provided in Va. Code §§ 2.2-3106 and 2.2-3110.

#### IV. Prohibited conduct regarding transactions

A. Members are generally prohibited from participating in transactions in which they have a personal interest. Member with a personal interest must disqualify himself from participating unless he is affected only as a member of the public. The disqualification must be recorded in the public records of the public body and must contain certain information. See Va. Code § 2.2-3114. Disqualified member cannot vote or participate in the discussion; cannot be present for a closed meeting in which the transaction is discussed; cannot discuss the matter with other governmental officers or employees. See Va. Code § 2.2-3112.

B. "Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction....” Va. Code § 2.2-3101.

C. Exceptions: member may participate if he is a member of a business, occupation or group of three or more persons who are affected by the transaction, if he complies with the declaration requirements, or if the party to a transaction is a client of his firm and certain other conditions and declaration requirements are met. See Va. Code §§ 2.2-3112(2) and 2.2-3114.

V. Disclosure Statements. Must file a disclosure form annually, on or before January 15. See Va. Code §§ 2.2-3114(B) and 2.2-3118., if required by the Act or if designated by the Governor. The form is provided to members by the Secretary of the Commonwealth by November 30, and are maintained as public records in the Office of the Secretary of the Commonwealth for five years.